

Estate of Roger Owensby vs. City of Cinti.
October 17, 2003

PATRICK E. CATON

1

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF OHIO

WESTERN DIVISION

ESTATE OF ROGER D. :
OWENSBY JR., et al., :
:
Plaintiffs, :
vs. : Case No. 01-CV-769
: (Judge S. A. Spiegel)
CITY OF CINCINNATI, :
et al., :
:
Defendants. :

Videotaped deposition of PATRICK EDMUND

CATON, a defendant herein, called by the plaintiffs
for cross-examination, pursuant to the Federal Rules
of Civil Procedure, taken before me, Wendy Davies
Welsh, a Registered Diplomate Reporter and Notary
Public in and for the State of Ohio, at the offices
of Helmer, Martins & Morgan Co. LPA, 1900 Fourth &
Walnut Centre, 105 East Fourth Street, Cincinnati,
Ohio, on Friday, October 17, 2003, at a.m.

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PATRICK E. CATON

1 APPEARANCES:	Page 2	S T I P U L A T I O N S	Page 4
2 On behalf of the Plaintiffs:		2 It is stipulated by and among counsel for the	
3 Paul B. Martins, Esq.		3 respective parties that the deposition of PATRICK	
4 Don Stiens, Esq.		4 EDMUND CATON, a defendant herein, called by the	
5 Frederick M. Morgan, Jr. Esq.		5 plaintiffs for cross-examination, pursuant to the	
6 Helmer, Martins & Morgan Co., L.P.A.		6 Federal Rules of Civil Procedure, may be taken at	
7 Suite 1900, Fourth & Walnut Centre		7 this time by the notary; that said deposition may be	
8 105 East Fourth Street		8 reduced to writing in stenotype by the notary, whose	
9 Cincinnati, Ohio 45202		9 notes may then be transcribed out of the presence of	
10 Phone: (513) 421-2400		10 the witness; and that proof of the official	
11 John J. Helbling, Esq.		11 character and qualifications of the notary is	
12 The Helbling Law Firm, L.L.C.		12 expressly waived.	
13 3672 Springdale Road		13	
14 Cincinnati, Ohio 45251		14 - - -	
15 Phone: (513) 923-9740		15	
16 On behalf of the Defendants City of Golf Manor,		16	
17 Stephen Tilley, Roby Heiland and Chris		17	
18 Campbell:		18	
19 Lynne Marie Longtin, Esq.		19	
20 Rendigs, Fry, Kieley & Dennis		20	
21 900 Fourth & Vine Tower		21	
22 One West Fourth Street		22	
23 Cincinnati, Ohio 45202-3688		23	
24 Phone: (513) 381-9200		24	
1 APPEARANCES (Continued):	Page 3	I N D E X	Page 5
2 On behalf of the Defendants Robert B. Jorg,		2 Examination by: Page	
3 Patrick Caton, Jason Hodge, Victor Spellen and		3 Mr. Martins 6	
4 Darren Sellers:		4 Ms. Longtin 232	
5 Donald E. Hardin, Esq.		5 Mr. Martins. 238	
6 Hardin, Lefton, Lazarus & Mack, LLC		6 - - -	
7 915 Cincinnati Club Building		7	
8 30 West Garfield Place		8 E X H I B I T S	
9 Cincinnati, Ohio 45202		9	
10 Phone: (513) 721-7300		10 Deposition Exhibit 28 22	
11 Also present:		10 Deposition Exhibit 29 30	
12 Richard W. Grubb, Videographer		11 Deposition Exhibit 30 43	
13 Liss Damstrom, Law Clerk		11 Deposition Exhibit 31 65	
14 Helmer, Martins & Morgan Co., L.P.A.		12 Deposition Exhibit 32 115	
15 Wendy M. Weller, Paralegal		12 Deposition Exhibit 33 186	
16 Buckley, King & Bluso		13 Deposition Exhibit 34 191	
17 Mr. Roger Owensby		13 Deposition Exhibit 35 194	
18 Mrs. Brenda Owensby		14 Deposition Exhibit 36 207	
19 Mr. Shawn Owensby		15 - - -	
20 Victor N. Spellen		16	
21		17	
22		18	
23		19	
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1 He said, "Yeah."	1 A. That's correct.
2 We gloved up, and Sergeant Watts said,	2 Q. And when you were doing that, were you
3 "Get him out of the car." And Officer Hasse and I	3 looking at him?
4 removed him from the car.	4 A. At his feet.
5 Q. Is that the first time you realized that	5 Q. Not at his face?
6 Roger Owensby was injured?	6 A. No.
7 A. That's correct.	7 Q. When you put him into the cruiser, as I
8 Q. Well, you knew before you placed him in	8 understand it, Officer Sellers put him in the
9 the car that he had been Mace'd, right?	9 cruiser from the rear passenger door and you went
10 A. That's correct.	10 around to the driver passenger door and crawled in,
11 Q. And isn't it true that the standard for	11 grabbed him by the shoulders and pulled him toward
12 care of someone who has been Mace'd is to provide	12 you; is that right?
13 them with water and fresh air?	13 A. Well, that's a much shortened version of
14 A. That is correct.	14 it, but that's essentially correct.
15 Q. And that was not provided?	15 Q. And when you pulled Mr. Owensby into the
16 A. I wouldn't consider that an injury.	16 cruiser toward you, weren't you face to face with
17 Q. What do you consider someone having been	17 him?
18 Mace'd?	18 A. No, I wouldn't say face to face. My head
19 A. An irri-- it's an irritation. It's a	19 was ducked and it was very dark inside the cruiser.
20 device used to irritate and cause pain. It doesn't	20 Mr. Owensby was a little more than a shadow to me at
21 cause injury.	21 that point.
22 Q. Okay. Well, in any event, you knew that	22 Q. The cruiser was parked next to a gas
23 he had been Mace'd, you knew that the standards were	23 island?
24 to provide water and fresh air, and you knew that	24 A. That's correct.
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1 water and fresh air were not provided, correct?	1 Q. And the gas island is illuminated by six
2 A. Well, it -- they're supposed to be	2 halogen lamps, correct?
3 provided after the scene is stabilized. And the	3 A. That is correct.
4 scene, in my opinion, was never stabilized.	4 Q. And the cruiser itself had its lights on?
5 Q. At the time you placed Roger Owensby in	5 A. I don't know if the lights were on or off.
6 the back seat of the Golf Manor cruiser with the	6 They weren't -- the interior lights were not on.
7 windows up, he had not been provided with water or	7 Q. There was no dome light on; is that what
8 fresh air, correct?	8 you're saying?
9 A. I thought there was plenty of fresh air	9 A. That's correct.
10 inside the cruiser.	10 Q. But there were lights from the -- from the
11 Q. Had you provided him with water?	11 top of the car that were on?
12 A. No, I had not.	12 A. I don't recall if there were lights on or
13 Q. And when you placed him or walked him	13 off on top of the cruiser.
14 toward the cruiser, you knew that he had several	14 MR. MARTINS: Let me have the tape.
15 lacerations on his face?	15 Q. I'm going to show you -- I'm going to show
16 A. No, I did not.	16 you, sir, what has previously been marked as
17 Q. How far away were you from Mr. Owensby's	17 Exhibit 20. This is the video of -- from Officer
18 face as you escorted him to the cruiser?	18 Spellen's car.
19 A. I would put us at shoulder distance -- we	19 (Videotaped played.)
20 were shoulder to shoulder essentially, as I walked	20 Q. I'm pausing it here. You can see the gas
21 him towards the cruiser.	21 island with the halogen lamps at the top, correct?
22 Q. And while you were doing this, as I	22 A. That's correct, about 20 feet away.
23 understand your prior testimony, you were commanding	23 Q. Well, we're not up to the car yet.
24 him to put his feet down, right?	24 A. No.

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1 towards the middle of his back and I wasn't moving.
2 It simply wasn't moving. And, because I didn't
3 already smell it, I figured Mace wasn't employed at
4 this point. And I screamed, "Mace this guy," and
5 nothing happened. And I screamed again, "Somebody
6 Mace this guy," and nothing happened.

7 And I looked up and I saw David Hunter on
8 one knee near the head of Roger Owensby, and the
9 best way I can describe it is he had like a deer
10 caught in the headlights look on his face and he's
11 looking at Roger Owensby's face.

12 Officer Jorg at this point is laying at an
13 angle across Owen-- I guess it would be Owensby's
14 left shoulder.

15 Q. Where's Officer Jorg's head?

16 A. Up near Owensby's head.

17 Q. Okay.

18 A. And I looked at Officer Hunter and I
19 bellowed at the top of my lungs, "Mace this mother
20 fucker." The intent was to shock him into action.

21 Q. Okay.

22 A. At which point he snapped, went to his
23 Mace canister and started to pull it out. And I --
24 my -- I dropped my attention back to the handcuff.

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1 And I started working it behind his back as best as
2 I could.

3 I know the Mace was employed at that
4 point.

5 Q. Because you could smell it?

6 A. I could smell it. I can only assume Dave
7 Hunter Mace him. I delivered three strikes --
8 well, at -- at this point Officer Jorg is becoming
9 successful with getting the left hand out from
10 behind Owensby, which I -- I believe he was digging
11 for it.

12 Q. When you looked up toward Officer Hunter,
13 did you notice whether or not Officer Jorg had his
14 arm around Mr. Owensby's head?

15 A. At that point I don't know.

16 Q. You just don't know one way or the other?

17 A. All I --

18 Q. He --

19 A. All I could see was -- I don't know one
20 way or another. All I could see is Owens-- Officer
21 Jorg's back at that point.

22 Q. So you couldn't even see Mr. Owensby's
23 head?

24 A. I -- I really don't recall.

1 Q. Was it placed under the arm?

2 A. I -- I would guess it was. I wasn't
3 looking at the PR-24. All I know is I saw the
4 glimpse of the PR-24 and all of a sudden his right
5 arm came across his body.

6 Q. Do you know who was using the PR-24?

7 A. I can only assume Officer Hodge was. And
8 I've been yelled at, don't assume anything in the
9 interview, but when I -- when we all stood up,
10 Officer Hodge was holding a PR-24, so...

11 Q. Have you received training on the use of a
12 PR-24 to get a suspect's arm behind his back?

13 A. Yes.

14 Q. And how do you -- according to your
15 training, how do you use the PR-24?

16 A. In -- in this case? In this --

17 Q. In this kind of scenario.

18 A. In this kind of scenario I -- I would
19 place -- I would place the PR-24 at an angle
20 underneath his arm and just kind of lever it.
21 That's what I would do in that -- in that case.

22 (Discussion off the stenographic record.)

23 Q. I don't have a PR-24, but I do have a
24 little bat. Can you show me how you would use -- if

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17:00:39 1 MR. HARDIN: Caton.

17:00:39 2 VIDEOGRAPHER: Sorry. Mr. Caton, you have

17:00:39 3 a right to review this videotape deposition

17:00:39 4 prior to its being shown to a court or jury.

17:00:39 5 Will you waive that right?

17:00:39 6 THE WITNESS: No.

17:00:40 7 VIDEOGRAPHER: We're off the record. The

17:00:42 8 time showing is 5:04 p.m.

17:00:42 9 MR. MARTINS: I take it you also want

17:00:49 10 signature on the deposition?

17:00:51 11 MR. HARDIN: Yes. Yes.

17:00:52 12

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17:00:52 17 (Deposition concluded.)

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PATRICK EDMUND CATON

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